



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of :)	Attorney No. 56490.000002
David VERCHERE)	Group Art Unit: 3625
Application No.: 09/441,204)	Examiner: Robert M. Pond
Filed: November 16, 1999)	Confirmation No.: 3995
For: METHOD AND SYSTEM FOR)	Customer No. 21967
ACQUIRING BRANDED)	
PROMOTIONAL PRODUCTS)	

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUBMISSION OF APPEAL BRIEF

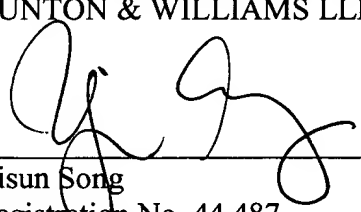
Sir:

In response to the Final Office Action mailed August 10, 2004, Appellant hereby submits an Appeal Brief, in connection with the above-captioned patent application in compliance with 37 C.F.R. § 1.192 (c), along with the requisite filing fee.

Respectfully submitted,

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APPEAL BRIEF

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TABLE OF CONTENTS

	<u>PAGE</u>
I. REAL PARTY IN INTEREST	2
II. RELATED APPEALS AND INTERFERENCES.....	2
III. STATUS OF CLAIMS	2
IV. STATUS OF AMENDMENTS	2
V. SUMMARY OF CLAIMED SUBJECT MATTER	2
A. Summary of the Invention	2
B. Embodiments of the Claimed Invention	4
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	5
VII. ARGUMENTS.....	6
A. Brief Description of the Art Applied to the Claims	6
B. Summary of Argument	8
C. The Claimed Inventions as Recited in Claims 21-36 are Directed to Statutory Subject Matter	8
D. Conklin Fails to Disclose a Multi-Level Network with Multiple Entry Points	12
E. Independent Claims 10 and 20 are Patentable Over Conklin and the Promomart Website	15
F. The Modification of Conklin in view of the Promomart Website as Applied to Claims 10 and 20 is Based Purely on Improper Hindsight.....	17
G. Independent Claims 21 and 26 are Patentable Over Conklin, the Promomart Website and the Busch Article.....	19
H. The Modification of Conklin in view of the Promomart Website and the Busch article as Applied to claims 21 and 26 is Based Purely on Improper Hindsight ...	22
I. Dependent claims 22-25 and 27-36 are Each Separately Patentable over the Combination of Conklin, the Promomart Website, the Busch Article and the Business Wire Article	24
1. Claim 22 is Separately Patentable.....	24
2. Claim 23 is Separately Patentable.....	25
3. Claim 24 is Separately Patentable.....	25
4. Claim 25 is Separately Patentable.....	26
5. Claim 27 is Separately Patentable.....	26
6. Claim 28 is Separately Patentable.....	26
7. Claim 29 is Separately Patentable.....	27

8. Claim 30 is Separately Patentable.....27

9. Claim 31 is Separately Patentable.....28

10. Claim 32 is Separately Patentable.....28

11. Claim 33 is Separately Patentable.....28

12. Claim 34 is Separately Patentable.....29

13. Claim 35 is Separately Patentable.....29

14. Claim 36 is Separately Patentable.....29

VIII. CONCLUSION.....31



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APPEAL BRIEF

Appellant's Appeal Brief in connection with the above-captioned patent application is hereby submitted. A check for the requisite fee in accordance with 37 C.F.R. § 1.17(c) is enclosed. A Notice of Appeal was submitted on November 10, 2004. It is respectfully submitted that this Appeal Brief is timely filed. Each item required by 37 C.F.R. § 41.37 is set forth below. Appellant believes that no additional fees are deemed necessary, however if there are any deficiencies, please charge the undersigned's Deposit Account No. 50-0206.

In response to the Office Action dated August 10, 2004, rejecting pending claims 10, 20-36, Appellant respectfully requests that the Board of Patent Appeals and Interferences reconsider and withdraw the rejection of record, and allow the pending claims, which are attached hereto as Appendix A.

I. REAL PARTY IN INTEREST

The real party in interest is Regency Ventures, LTD, the assignee of the above-referenced application.

II. RELATED APPEALS AND INTERFERENCES

To the best of Appellant's knowledge, there are no related Appeals or Interferences.

III. STATUS OF CLAIMS

Claims 10, 20-36 are pending in the application. The rejections of each of claims 10, 20-36 are appealed.

IV. STATUS OF AMENDMENTS

No amendments to the claims have been filed subsequent to the rejection dated August 10, 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Summary of the Invention

According to an embodiment of the present inventions, a system and method provide for an exchange platform that offers scaling opportunities and economies not available in the traditional business model (specification page 3, lines 19-20). An embodiment of the present invention provides a central real-time exchange for creating a community environment for various participants in the promotional products industry and providing services that establish a web presence for each member (specification page 4, lines 16-18).

An embodiment of the present invention provides customers with an easy, efficient method of purchasing branded promotional products online (specification page 5, line 11-12).

For example, customers may browse through a set of products of interest where the customer's logo and artwork may be securely maintained in a readily available personal or corporate online library (specification page 5, lines 12-14). Customers are also provided with the ability to view their firms' logo applied directly to the products selected (specification page 5, lines 14-15). The production and delivery of orders online may be tracked where the customer is given access to the order status on demand (specification page 5, lines 15-17). In addition, an embodiment of the present invention may also create custom web pages for corporate clients to manage their branding program and products (specification page 5, lines 18-19).

An embodiment of the present invention provides resellers the opportunity to leverage their sales efforts by streamlining the process of sourcing and pricing products and automating tedious administrative tasks (specification page 5 line 20 - page 6, line 1). Other services may include a selection of high quality products from vendor partners; timely information on new products; seasonal and special offers; online order tracking; shipping, insurance and financing options; customer ordering; demographic and usage data and market research information (specification page 6, line 1-4).

An embodiment of the present invention provides vendor partners the ability to manage the cataloguing, production and distribution processes (specification page 6, lines 5-6). In addition, an embodiment of the present invention may collect, house and distribute product images, specifications, and pricing information (specification page 6, lines 6-7). Vendor partners may create and maintain unique web-site and datalinks (specification page 6, lines 11-12). An embodiment of the present invention provides an incentive for vendor partners to continue

entering data and maintaining data as accurately as possible by offering the ability to resell the information (specification page 6, lines 12-14).

B. Embodiments of the Claimed Invention

As recited in system claim 10 and similarly in method claim 20, an embodiment of the present invention includes a database (Figure 3, 3010) containing product information wherein the product information comprises product data and imprinting data related to a plurality of branded promotional products; a products web page (3110) where a customer or a reseller (3140) accesses the products web page to acquire at least one branded promotional products; a reseller showcase web page (3100) where a customer (3130) accesses the reseller showcase web page to acquire at least one branded promotional products; a vendor showcase web page (3080) where a reseller (3090) accesses the vendor showcase web page to acquire at least one branded promotional products; a front office module (3050) for providing purchase order information and marketing information and receiving at least one order from one or more resellers or customers wherein the at least one order is related to the plurality of branded promotional products; a bidding module (3030) for enabling at least one or more resellers or customers to present at least one order and enabling at least one vendor to bid on the presented order wherein the at least one order is related to the plurality of branded promotional products; an artwork library (3070) for storing customer's logo and branding artwork associated with the plurality of branded promotional products; and a processor (3040) for processing orders received from the front office module; wherein the database, the products web page, the reseller showcase web page, the vendor showcase web page, the front office module, the bidding module, the artwork library and the processor are interoperably connected.

As recited in system claim 21 and similarly in method claim 26, an embodiment of the present invention includes a product database (Figure 3, 3010) for storing data related to a plurality of products, the data including at least pricing data and imprinting data related to the plurality of products; a vendor entry point interface (3020) for enabling a vendor to enter at least one product data specifics to the product database, the at least one product data specifics comprising one or more of imprinting data, display data, accurate detailed pricing data and product placement data; a vendor showcase module (3080) for displaying product data and providing ordering access to one or more resellers at a reseller entry point interface (3090), wherein the vendor showcase module (3080) is customized for a particular vendor; a branded promotional products module (3110) for providing a plurality of promotional products to one or more of customers and resellers (3140) and receiving at least one order for one or more promotional products; a reseller showcase module (3100) for displaying products selected by the reseller for resale to a reseller group of customers selected by the reseller where the reseller group of customers accesses the reseller showcase module at a reseller customer entry point interface (3130); and a company logo store module (3120) for displaying products selected by the reseller for resale to a group of customers associated with a company (3150), wherein the company logo store module is customized for the company.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues on appeal are as follows.

A. Whether claims 21-36 are unpatentable under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

B. Whether claims 10 and 20 are unpatentable under 35 U.S.C. § 103(a) by U.S. Patent No. 6,141,653 to Conklin *et al* ("Conklin") in view of Promomart <http://web.archive.org/web/19980116181228/http://www.promomart.com/> ("Promomart website").

C. Whether claims 21, 23-26, 28-36 are unpatentable under 35 U.S.C. § 103(a) by Conklin in view of the Promomart website, further in view of Busch, Melanie "Companies Spin Own Webs with Intranets" August 25, 1996 ("Busch article").

D. Whether claims 22 and 27 are unpatentable under 35 U.S.C. § 103(a) by U.S. Patent No. 6,141,653 to Conklin in view of the Promomart website and the Busch article, further in view of "911gifts.com Expands Features, Service and Merchandise to Rescue Holiday Shoppers" Business Wire, November 16, 1998 ("Business Wire article").

None of the claims stand or fall together. The reasons why each claim is separately patentable are presented in the Arguments section below.

VII. ARGUMENTS

The rejections against the pending claims under consideration in the above-captioned patent application should be reversed for at least the reasons set forth below.

A. Brief Description of the Art Applied to the Claims

U.S. Patent No. 6,141,653 to Conklin et al

Conklin appears to be directed to a system for interactive multivariate negotiations over a network. In particular, the multivariate negotiations engine of Conklin enables a sponsor to create and administer a community between participants (*i.e.*, buyers and sellers). According to Conklin, a buyer can search and evaluate seller information, propose and negotiate orders and

counteroffers that include all desired terms, request sample quantities, and track activity. In addition, a seller in Conklin can use remote authoring templates to create a complete website for immediate integration and activation in the community, to evaluate proposed buyer orders and counteroffers and to negotiate multiple variables iteratively with a buyer.

Promomart Website

The Promomart website appears to be directed to an online database shopping cart that is routed to a retailer where a consultant may be selected. By selecting a product category, Promomart appears to provide a list of vendors from which products matching the category may be purchased from. The resulting page, as shown on page 16 of Promomart, is merely a list of consultants from whom products may be purchase.

Busch Article

The Busch article appears to be directed to improving communication with employees while reducing reliance on paper through an intranet. According to the Busch article, intranets are essentially networks within a company that uses technology of the world wide web where access is restricted to people within the company. More specifically, the Busch article refers to posting job openings on a company's intranet.

Business Wire Article

The Business Wire article appears to be directed to 911gifts.com website which purports to aid shoppers in selecting, purchasing, wrapping and delivering presents for various recipients.

The applied combinations of the above references fail to obviate the combination of claim limitations, as recited by Appellant.

B. Summary of Argument

Claims 21-36 are improperly rejected under 35 U.S.C. § 101 because the claimed inventions are directed to statutory subject matter.

Claims 10 and 20 are improperly rejected under 35 U.S.C. § 103(a) by Conklin in view of the Promomart website because the Office Action fails to set forth a *prima facie* case of obviousness. In particular, the combination of Conklin and the Promomart website fails to show the claimed inventions.

Claims 21, 23-26, 28-36 are improperly rejected under 35 U.S.C. § 103(a) by Conklin in view of the Promomart website further in view of the Busch article because the Office Action fails to set forth a *prima facie* case of obviousness. In particular, the combination of Conklin, the Promomart website and the Busch article fails to show the claimed inventions.

Claims 22 and 27 are improperly rejected under 35 U.S.C. § 103(a) by Conklin in view of the Promomart website and the Busch article, further in view of the Business Wire article because the Office Action fails to set forth a *prima facie* case of obviousness. In particular, the combination of Conklin, the Promomart website, the Busch article and the Business Wire article fails to show the claimed inventions.

C. The Claimed Inventions as Recited in Claims 21-36 are Directed to Statutory Subject Matter

Claims 21-36 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Appellant respectfully traverses and requests that the rejections be withdrawn.

The Examiner asserts that claims 21-36 are directed to non-statutory subject matter. Specifically, the Examiner states:

The claims are directed towards a process that does nothing more than manipulate an abstract idea. Mere recitation in the preamble (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea. There is no practical application in the technological arts. For subject matter to be statutory, the claimed process must be limited to a practical application of the abstract idea or mathematical algorithm in the technological arts. Office Action, page 5.

Appellant respectfully submits that this is improper for at least the following reasons.

The Examiner has invoked 35 U.S.C. § 101. That section unequivocally states as follows (emphasis added):

§101 Inventions Patentable

Whoever invents or discovers *any new and useful process, machine, manufacture*, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The Court of Appeals For The Federal Circuit has interpreted patentable subject matter to include subject matter that produces useful, concrete and tangible results. *See, e.g., AT&T Corp. v. Excel Communications*, 172 F.3d 1352, 50 U.S.P.Q.2d 1447 (Fed. Cir. 1999) (finding that a patent's claims to a method for enhancing a long-distance telephone call message record by adding a data field with information on the long-distance provider of the call recipient "fall comfortably within the broad scope of patentable subject matter under §101."); *State Street Bank Trust & Co. v. Signature Financial Group, Inc.*, 47 U.S.P.Q.2d 1596 (Fed. Cir. 1998) (stating that mere fact that claimed invention involves inputting numbers, calculating numbers, outputting numbers, and storing numbers, would not, in and of itself, render invention non-statutory subject matter, unless its operation does not produce a useful, concrete and tangible result.).

The Office has the burden to establish a *prima facie* case that the claimed invention as a whole is directed to solely an abstract idea or to manipulation of abstract ideas or does not produce a useful result. Only when the claim is devoid of any limitation to a practical application in the technological arts should it be rejected under 35 U.S.C. § 101. Further, when such a rejection is made, the Office must expressly state how the language of the claims has been interpreted to support the rejection. In this case, any such showing is completely lacking. Thus, the Examiner has failed to make a *prima facie* showing.

Appellant respectfully submits that claims 21-36 define inventions that produce “useful, concrete and tangible results” and, thus, satisfy the requirements of 35 U.S.C. § 101. For example, claims 21 and 26 recite a new and useful system and method for “a central exchange of data associated with branded promotional products.” According to one exemplary embodiment, the system and method further include “*a product database* for storing data related to a plurality of products, the data including at least pricing data and imprinting data related to the plurality of products;” “*a vendor entry point interface* for enabling a vendor to enter at least one product data specifics to the product database, the at least one product data specifics comprising one or more of imprinting data, display data, accurate detailed pricing data and product placement data;” “*a vendor showcase module* for displaying product data and providing ordering access to one or more resellers at *a reseller entry point interface*, wherein the vendor showcase module is customized for a particular vendor;” “*a branded promotional products module* for providing a plurality of promotional products to one or more of customers and resellers and receiving at least one order for one or more promotional products;” “*a reseller showcase module* for displaying products selected by the reseller for resale to a reseller group of customers selected by the

reseller where the reseller group of customers accesses the reseller showcase module at a reseller customer entry point interface;" and "*a company logo store module* for displaying products selected by the reseller for resale to a group of customers associated with a company, wherein the company logo store module is customized for the company." That such a process and system produce a useful, concrete and tangible result is unquestionable. For example, and as described in the Specification, one of the useful, concrete and tangible results of one embodiment of the invention is to provide a central real-time exchange for creating a community environment for all participants and provide services that establish a web presence for each member (see page 4). One goal is to build a core foundation of services for use over the Internet that provides an easy and global method of facilitating business transactions amongst its members in a common environment (see pages 4-5). Thus, the pending claims set forth useful inventions that have "real world" practical utility and that provide concrete, reproducible results that are tangible in the physical world. Furthermore, these results are obtained using the technological arts (e.g., database, interface, modules, etc.) in a non-trivial manner. For at least these reasons, Appellant respectfully submits that the rejections under 35 U.S.C. § 101 are improper and requests that they be withdrawn.

In addition, at least two separate statutory categories of invention are recited in claims 21-36. For example, claims 21-25 and 31-33 are directed to various systems, and claims 26-30 and 34-36 are directed to processes. Each of these categories are explicitly recited in 35 U.S.C. § 101 as being patent eligible subject matter and the Examiner has not provided an explanation how any of the language, in any of the claims, for any of the categories is directed to an abstract idea. Appellant respectfully requests clarification for the rejections of these claims, for it is not

understood how the recited computer implemented system and method are directed to “an abstract idea” when tangible objects and features are recited. For example, claims 21 and 26 recite, among other things, a product database, various interfaces and modules.

D. Conklin Fails to Disclose a Multi-Level Network with Multiple Entry Points

None of the references cited in any combination meet the combination of claim limitations set forth by Appellant. More specifically, Appellant recites discrete separate entry points for different players (e.g., vendor, reseller, customer, etc.). For example, independent claims 21 and 26 recite *a vendor entry point interface*, *a reseller entry point interface*, and *a reseller customer entry point interface*. Independent claims 10 and 20 recite *a products web page*, *a reseller showcase web page*, *a vendor showcase web page*. These claimed features are not found in any reference or any combination of references cited. In addition, the Office Action has failed to properly address these claim limitations.

For claims 10 and 20, the Office Action alleges that Conklin combined with the Promomart website teach the combination of claim limitations. For claims 21 and 26, the Office Action alleges that Conklin combined with the Promomart website and the Busch article teach the combination of claim limitations. Appellant respectfully disagrees. Conklin appears to enable a sponsor to create and administer of community between buyers and sellers. More specifically, Conklin is directed to allowing a buyer to search and evaluate seller information, propose and negotiate orders and counteroffers. In addition, Conklin allows a seller to evaluate proposed buyer orders and counteroffers. The system of Conklin alleges to provide comprehensive iterative bargaining ability for between buyers and sellers (col. 14, lines 27-31). Conklin further clarifies that each participant is either a buyer or a seller in the community (col. 17, lines 18-21). The system of Conklin appears to be directed to enabling buyers and sellers to

iteratively negotiate with each other. The invention of Conklin purports to provide an economical and speedy way to negotiate complex, multivariate items (col. 17, lines 54-56) between buyers and sellers.

In contrast, the claimed invention provides multiple levels of interaction through different entry points. In other words, the claimed inventions provide a multi-level network among sellers, resellers and vendors whereas Conklin is limited to only a bi-level network between buyers and sellers. In terms of claim language, Conklin fails to disclose at least *a vendor entry point interface*, *a reseller entry point interface*, and *a reseller customer entry point interface*, as recited in independent claims 21 and 26. In addition, Conklin fails to disclose at least *a products web page*, *a reseller showcase web page*, *a vendor showcase web page*, as recited in independent claims 10 and 20.

In addressing the multi-level network of the claimed inventions, the Office Action has interpreted resellers as a seller participant (see page 7 of Office Action mailed August 10, 2004). In other words, the Office Action alleges that Conklin's disclosure of sellers meets the claim limitation of not only vendors, but also resellers. However, by applying the overly broad definition proposed by the Office Action, the Examiner has combined two distinct limitations into a single element thereby essentially eliminated the entire reseller limitation in the claims. More specifically, the Examiner has eviscerated the 'reseller entry point interface' limitation, which is distinct from a 'vendor entry point interface' and 'reseller customer entry point interface.' The overly broad definition of "reseller" suggested by the Office Action contradicts the definition provided by the claim language itself where the claims define customers, resellers and vendors as distinct participants. For example, claim 21 recites "wherein **customers**

comprise users who buy products from the branded promotional products module; **resellers** comprise users who resell products to customers; and **vendors** comprise users who supply one or more products and imprinting services.” Further, the claims recite distinct entry points for vendors, resellers and customers. Thus, the definition applied by the Office Action is improper. Properly interpreting vendors, resellers and customers as distinct participants, Conklin’s bi-level system of sellers and buyers clearly fails to meet the claimed invention of a multi-level network involving resellers, vendors and customers. Therefore, for at least these reasons, the disclosure of Conklin is deficient in meeting the combination of claim limitations set forth by Appellant.

On page 3 of the Office Action, the Examiner alleges that Conklin teaches “entry points for sellers to create their web sites, and access points for resellers and customers.” However, Conklin’s disclosure is limited to buyers and sellers, in particular, negotiation between buyers and sellers. Any discussion even remotely related to vendors, resellers and customers is completely lacking in Conklin.

The Examiner applies an improper definition of the claim limitations. For example, on page 7 of the Office Action, the Examiner addresses the reseller limitation by applying Conklin’s discussion of a “seller.” More specifically, on page 7 a reseller is defined by the Examiner as “a seller participant when acting as a seller of products or services.” On page 8, a vendor is defined by the Examiner as “a seller participant when acting as a seller of products or services.” On page 8, a reseller is now re-defined by the Examiner as “a buyer participant when acting as a buyer of goods or services from a vendor participant.” In this instance, the Examiner uses the same definition for reseller (on page 7) and vendor (on page 8). However, the Examiner’s definition for reseller on page 7 is different than the definition of reseller on page 8. The Examiner’s

attempted application of Conklin and definition of reseller and vendor are confusing, at best. It is clear that Conklin has been improperly applied in the Examiner's attempt to somehow forge together a rejection of the pending claims.

E. Independent Claims 10 and 20 are Patentable Over Conklin and the Promomart Website

Independent claims 10 and 20 recite a plurality of entry points for different users of a system for acquiring branded promotional products. More specifically, claim 10 recites “*a database* containing product information wherein the product information comprises product data and imprinting data related to a plurality of branded promotional products;” “*a products web page* where a customer or a reseller accesses the products web page to acquire at least one branded promotional products;” “*a reseller showcase web page* where a customer accesses the reseller showcase web page to acquire at least one branded promotional products;” “*a vendor showcase web page* where a reseller accesses the vendor showcase web page to acquire at least one branded promotional products;” “*a front office module* for providing purchase order information and marketing information and receiving at least one order from one or more resellers or customers wherein the at least one order is related to the plurality of branded promotional products;” “*a bidding module* for enabling at least one or more resellers or customers to present at least one order and enabling at least one vendor to bid on the presented order wherein the at least one order is related to the plurality of branded promotional products;” “*an artwork library* for storing customer's logo and branding artwork associated with the plurality of branded promotional products;” and “*a processor* for processing orders received from the front office module wherein the database, the products web page, the reseller showcase

web page, the vendor showcase web page, the front office module, the bidding module, the artwork library and the processor are interoperably connected.”

As explained in detail above, Conklin is directed to a bi-level network between buyers and sellers. Therefore, Conklin fails to disclose the claimed invention including at least *a products web page, a reseller showcase web page, a vendor showcase web page*, as recited in independent claims 10 and 20.

Promomart fails to address the many deficiencies of Conklin. As recognized by the Office Action, Conklin fails to disclose branded promotional products community website (page 9 of Office Action mailed August 10, 2004); storing imprinting data (page 10 of Office Action mailed August 10, 2004); and providing an artwork library (page 11 of Office Action mailed August 20, 2004), among other limitations. In addition, the Office Action has failed to provide motivation to properly combine Conklin and the Promomart website.

The Promomart website (see pages 6-7 and pages 10-11) fails to provide any mention or suggestion of the discrete entry points as claimed by Appellant. In contrast to the claimed inventions, Promomart appears to disclose an online database shopping cart that is routed to a retailer where a consultant may be selected. By selecting a product category, Promomart appears to provide a list of vendors from which products matching the category may be purchased from. The resulting page, as shown on page 16 of Promomart, is merely a list of consultants from whom products may be purchase. Therefore, Promomart is more akin to a referral service. Promomart clearly fails to disclose discrete entry points for different participants, such as vendors, resellers, and customers. Rather, there is no distinction of different participants in Promomart and all users appear to enter and access Promomart in the same manner. Therefore,

different participants are unable to manage and enter data specific to their roles, as provided by the system and method of the present inventions.

On page 3-4 of the Office Action, the Examiner alleges that the Promomart website is a “purchasing” website. However, upon a careful read of the reference, Promomart merely provides a list of consultants where product purchasing is not available through Promomart itself.

The Office Action combines Conklin’s system for interactive multivariate negotiations network between buyers and sellers with Promomart’s referral system without a proper basis for combining. Conklin’s negotiations network has nothing to do with the referral system of Promomart. There is simply no basis available to one of ordinary skill in the art to combine a negotiation network with a promotional product’s referral system. Even if Conklin’s system could be combined with Promomart’s referral system, the multiple entry points claimed by Appellant would nonetheless still be missing from the proposed combination.

F. The Modification of Conklin in view of the Promomart Website as Applied to Claims 10 and 20 is Based Purely on Improper Hindsight

Even if the references could be combined, the resulting combination would nevertheless fail to teach the claimed invention. The proposed rejections are classic examples of hindsight reconstruction that is contrary to the law. Controlling Federal Circuit and Board precedent require that the Office Action set forth specific and particularized motivation for one of ordinary skill in the art to modify a primary reference to achieve a claimed invention. *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 664 (Fed. Cir. 2000) (“[t]o prevent a hindsight-based obviousness analysis, [the Federal Circuit has] clearly established that the relevant inquiry for determining the scope and content of the prior art is whether there is a reason, suggestion, or motivation in the prior art or elsewhere that would have led one of ordinary skill in the art to combine the references.”).

Here, the Office Action combines Conklin and the Promomart website, each of which are directed to different goals, to allegedly yield independent claims 10 and 20. The Office Action has failed to set forth a *prima facie* case of obviousness for the independent claims. Additionally, it fails to establish a *prima facie* case of obviousness for the further modifications proposed to yield the dependent claims.

Specifically, when a primary reference is missing elements, the law of obviousness requires that the Office Action set forth some motivation why one of ordinary skill in the art would have been motivated to modify the primary reference in the exact manner proposed. *Ruiz*, 234 F.3d at 664. In other words, there must be some recognition that the primary reference has a problem and that the proposed modification will solve that exact problem. All of this motivation must come from the teachings of the prior art to avoid impermissible hindsight looking back at the time of the invention.

In the present case, the Office Action's justification for modifying the applied references has absolutely nothing to do with the deficiencies of Conklin. To properly modify Conklin to correct for these major deficiencies, the Office Action has the burden to show some motivation why providing those elements would have overcome some perceived problem with the Conklin system. Any such motivation is completely lacking.

The Office Action fails to show any motivation as to why one of ordinary skill in the art would have been motivated to combine the various combination of references. The mere fact that the various separate disclosures can be combined or modified does not render the resultant combination or modification obvious unless there is a suggestion or motivation found somewhere in the prior art regarding the desirability of the combination or modification. *See*

M.P.E.P § 2143.01; *see also In re Mills*, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990); *In re Fritz*, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). In addition, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

In *In re Hedges*, 783, F.2d 1038, 1041, 228 U.S.P.Q. 685, 687, (Fed. Cir. 1986), the U.S. Court of Appeals for the Federal Circuit stated that “the prior art as a whole must be considered. The teachings are to be viewed as they would have been viewed by one of ordinary skill.” The court also stated that “[i]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art” (quoting *In re Wesslau*, 353 F.2d 238, 241, 147 U.S.P.Q. 391, 393 (CCPA, 1965)).

G. Independent Claims 21 and 26 are Patentable Over Conklin, the Promomart Website and the Busch Article

Independent claims 21 and 26 recite a computer implemented system for providing a central exchange of data, the system comprising “***a product database*** for storing data related to a plurality of products, the data including at least pricing data and imprinting data related to the plurality of products;” “***a vendor entry point interface*** for enabling a vendor to enter at least one product data specifics to the product database, the at least one product data specifics comprising one or more of imprinting data, display data, accurate detailed pricing data and product placement data;” “***a vendor showcase module*** for displaying product data and providing ordering access to one or more resellers at ***a reseller entry point interface***, wherein the vendor showcase

module is customized for a particular vendor;” “*a branded promotional products module* for providing a plurality of promotional products to one or more of customers and resellers and receiving at least one order for one or more promotional products;” “*a reseller showcase module* for displaying products selected by the reseller for resale to a reseller group of customers selected by the reseller where the reseller group of customers accesses the reseller showcase module at a reseller customer entry point interface;” and “*a company logo store module* for displaying products selected by the reseller for resale to a group of customers associated with a company, wherein the company logo store module is customized for the company.”

As explained in detail above, Conklin is directed to a bi-level network between buyers and sellers. Therefore, Conklin fails to disclose the claimed invention including at least *a vendor entry point interface*, *a reseller entry point interface*, and *a reseller customer entry point interface*, as recited in independent claims 21 and 26.

Promomart fails to address the many deficiencies of Conklin. As recognized by the Office Action, Conklin fails to disclose branded promotional products community website (page 9 of Office Action mailed August 10, 2004); storing imprinting data (page 10 of Office Action mailed August 10, 2004); and providing an artwork library (page 11 of Office Action mailed August 20, 2004), among other limitations. In addition, the Office Action has failed to provide motivation to properly combine Conklin and the Promomart website.

The Promomart website (see pages 6-7 and pages 10-11) fails to provide any mention or suggestion of the discrete entry points as claimed by Appellant. In contrast to the claimed inventions, Promomart appears to disclose an online database shopping cart that is routed to a retailer where a consultant may be selected. By selecting a product category, Promomart appears

to provide a list of vendors from which products matching the category may be purchased from. The resulting page, as shown on page 16 of Promomart, is merely a list of consultants from whom products may be purchase. Therefore, Promomart is more akin to a referral service. Promomart clearly fails to disclose discrete entry points for different participants, such as vendors, resellers, and customers. Rather, there is no distinction of different participants in Promomart and all users appear to enter and access Promomart in the same manner. Therefore, different participants are unable to manage and enter data specific to their roles, as provided by the system and method of the present inventions.

On page 3-4 of the Office Action, the Examiner alleges that the Promomart website is a "purchasing" website. However, upon a careful read of the reference, Promomart merely provides a list of consultants where product purchasing is not available through Promomart itself.

The Office Action combines Conklin's system for interactive multivariate negotiations network between buyers and sellers with Promomart's referral system without a proper basis for combining. Conklin's negotiations network has nothing to do with the referral system of Promomart. There is simply no basis available to one of ordinary skill in the art to combine a negotiation network with a promotional product's referral system. Even if Conklin's system could be combined with Promomart's referral system, the multiple entry points claimed by Appellant would nonetheless still be missing from the proposed combination.

Clearly, Promomart falls short of making up the major deficiencies of Conklin. As Conklin is used in each and every rejection, Conklin is deficient in all the current rejections. The additional secondary references, in any combination, fail to make up the major deficiencies of Conklin. More specifically, the Busch article fails to provide any teaching even remotely related

to the distinct entry points claimed by Appellant. The Busch article provides a general discussion of company intranets, with no mention of the discrete entry points claimed by Appellant. Therefore, the cited references in any combination fail to obviate the claimed inventions.

H. The Modification of Conklin in view of the Promomart Website and the Busch article as Applied to claims 21 and 26 is Based Purely on Improper Hindsight

Even if the references could be combined, the resulting combination would nevertheless fail to teach the claimed invention. The proposed rejections are classic examples of hindsight reconstruction that is contrary to the law. Controlling Federal Circuit and Board precedent require that the Office Action set forth specific and particularized motivation for one of ordinary skill in the art to modify a primary reference to achieve a claimed invention. *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 664 (Fed. Cir. 2000) (“[t]o prevent a hindsight-based obviousness analysis, [the Federal Circuit has] clearly established that the relevant inquiry for determining the scope and content of the prior art is whether there is a reason, suggestion, or motivation in the prior art or elsewhere that would have led one of ordinary skill in the art to combine the references.”). Here, the Office Action combines Conklin, the Promomart website and the Busch article, each of which are directed to different goals, to allegedly yield independent claims 21 and 26. The Office Action has failed to set forth a *prima facie* case of obviousness for the independent claims. Additionally, it fails to establish a *prima facie* case of obviousness for the further modifications proposed to yield the dependent claims.

Specifically, when a primary reference is missing elements, the law of obviousness requires that the Office Action set forth some motivation why one of ordinary skill in the art

would have been motivated to modify the primary reference in the exact manner proposed. *Ruiz*, 234 F.3d at 664. In other words, there must be some recognition that the primary reference has a problem and that the proposed modification will solve that exact problem. All of this motivation must come from the teachings of the prior art to avoid impermissible hindsight looking back at the time of the invention.

In the present case, the Office Action's justification for modifying the various references has absolutely nothing to do with the deficiencies of Conklin. To properly modify Conklin to correct for these major deficiencies, the Office Action has the burden to show some motivation why providing those elements would have overcome some perceived problem with the Conklin system. Any such motivation is completely lacking.

The Office Action fails to show any motivation as to why one of ordinary skill in the art would have been motivated to combine the various combination of references. The mere fact that the various separate disclosures can be combined or modified does not render the resultant combination or modification obvious unless there is a suggestion or motivation found somewhere in the prior art regarding the desirability of the combination or modification. *See* M.P.E.P § 2143.01; *see also In re Mills*, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990); *In re Fritz*, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). In addition, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

In *In re Hedges*, 783, F.2d 1038, 1041, 228 U.S.P.Q. 685, 687, (Fed. Cir. 1986), the U.S. Court of Appeals for the Federal Circuit stated that "the prior art as a whole must be considered.

The teachings are to be viewed as they would have been viewed by one of ordinary skill.” The court also stated that “[i]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art” (quoting *In re Wesslau*, 353 F.2d 238, 241, 147 U.S.P.Q. 391, 393 (CCPA, 1965)).

I. Dependent claims 22-25 and 27-36 are Each Separately Patentable over the Combination of Conklin, the Promomart Website, the Busch Article and the Business Wire Article

Dependent claims 22-25 and 27-36 depend ultimately from independent claims 21 and 26 and, as such, contain the features recited in claims 21 and 26. As discussed above, the proposed combinations fail to suggest or disclose each feature recited in claims 21 and 26 and, therefore, also fails to suggest or disclose at least these same features in the dependent claims 22-25 and 27-36. For at least this reason, Appellant respectfully submits that the rejections of claims 22-25 and 27-36 are improper and request that they be withdrawn. Additionally, these claims are separately patentable over the proposed combination of references for at least the reasons stated below.

1. Claim 22 is Separately Patentable

Claim 22 is separately patentable because the combination of the combination of Conklin, the Promomart website, the Busch article and the Business Wire article fails to disclose *further enabling one or more customers to schedule reminders for a recurring event related to ordering promotional products*. The Office Action’s rejection of this claim is improper for the reasons set forth above with respect to claim 21. The combination of Conklin, the Promomart

website, the Busch article and the Business Wire article fails to show each and every limitation of claim 22. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

2. Claim 23 is Separately Patentable

Claim 23 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *a back office module for processing the orders for the plurality of promotional products*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 21. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 23. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

3. Claim 24 is Separately Patentable

Claim 24 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *a front office module for providing one or more of order status data, historical information related to orders and market information services wherein the market information services comprise one or more of account summary options and web hits habit reports*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 21. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 24. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

4. Claim 25 is Separately Patentable

Claim 25 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *a bidding module for enabling one or more of resellers and customers to present at least one order and enabling a plurality of vendors to bid on the presented at least one order*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 21. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 25. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

5. Claim 27 is Separately Patentable

Claim 27 is separately patentable because the combination of the combination of Conklin, the Promomart website, the Busch article and the Business Wire article fails to disclose *further enabling one or more customers to schedule reminders for a recurring event related to ordering promotional products*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 26. The combination of Conklin, the Promomart website, the Busch article and the Business Wire article fails to show each and every limitation of claim 27. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

6. Claim 28 is Separately Patentable

Claim 28 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *processing the orders for the plurality of promotional products*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 26. The combination of Conklin, the

Promomart website and the Busch article fails to show each and every limitation of claim 28. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

7. Claim 29 is Separately Patentable

Claim 29 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *providing one or more of order status data, historical information related to orders and market information services wherein the market information services comprise one or more of account summary options and web hits habit reports*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 26. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 29. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

8. Claim 30 is Separately Patentable

Claim 30 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *enabling one or more of resellers and customers to present at least one order and enabling a plurality of vendors to bid on the presented at least one order*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 26. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 30. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

9. Claim 31 is Separately Patentable

Claim 31 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *wherein the resellers comprise distributors and the vendors comprise suppliers*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 21. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 31. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

10. Claim 32 is Separately Patentable

Claim 32 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *further comprising an artwork library for storing artwork associated with at least one of the plurality of products*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 21. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 32. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

11. Claim 33 is Separately Patentable

Claim 33 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *wherein the at least one order is tracked and order status data is provided*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 21. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 33.

In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

12. Claim 34 is Separately Patentable

Claim 34 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *wherein the resellers comprise distributors and the vendors comprise suppliers*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 26. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 34. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

13. Claim 35 is Separately Patentable

Claim 35 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *providing an artwork library for storing artwork associated with at least one of the plurality of products*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 26. The combination of Conklin, the Promomart website and the Busch article fails to show each and every limitation of claim 35. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

14. Claim 36 is Separately Patentable

Claim 36 is separately patentable because the combination of the combination of Conklin, the Promomart website and the Busch article fails to disclose *wherein the at least one order is tracked and order status data is provided*. The Office Action's rejection of this claim is improper for the reasons set forth above with respect to claim 26. The combination of Conklin,

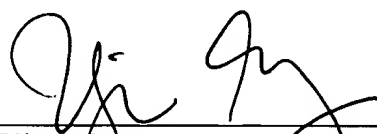
the Promomart website and the Busch article fails to show each and every limitation of claim 36. In addition, there is no teaching or motivation to modify any of the applied references to include this feature.

VIII. CONCLUSION

In view of the foregoing, Appellant respectfully request that the Board reverse the prior art rejections set forth in the Office Action and allow all of the pending claims.

Respectfully submitted,

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APPENDIX A - PENDING CLAIMS

CLAIMS

Claims 1-9 (**Canceled**).

10. (**Previously Presented**) A computer implemented system for acquiring branded promotional products comprising:

a database containing product information wherein the product information comprises product data and imprinting data related to a plurality of branded promotional products;

a products web page where a customer or a reseller accesses the products web page to acquire at least one branded promotional products;

a reseller showcase web page where a customer accesses the reseller showcase web page to acquire at least one branded promotional products;

a vendor showcase web page where a reseller accesses the vendor showcase web page to acquire at least one branded promotional products;

a front office module for providing purchase order information and marketing information and receiving at least one order from one or more resellers or customers wherein the at least one order is related to the plurality of branded promotional products;

a bidding module for enabling at least one or more resellers or customers to present at least one order and enabling at least one vendor to bid on the presented order wherein the at least one order is related to the plurality of branded promotional products;

an artwork library for storing customer's logo and branding artwork associated with the plurality of branded promotional products; and

a processor for processing orders received from the front office module;

wherein the database, the products web page, the reseller showcase web page, the vendor showcase web page, the front office module, the bidding module, the artwork library and the processor are interoperably connected.

Claims 11-19 **(Canceled)**.

20. **(Previously Presented)** A computer implemented method for acquiring branded promotional products comprising the steps of:

providing a database containing product information wherein the product information comprises product data and imprinting data related to a plurality of branded promotional products;

providing a products web page where a customer or a reseller accesses the products web page to acquire at least one branded promotional products;

providing a reseller showcase web page where a customer accesses the reseller showcase web page to acquire at least one branded promotional products;

providing a vendor showcase web page where a reseller accesses the vendor showcase web page to acquire at least one branded promotional products;

providing a front office module for providing purchase order information and marketing information and receiving at least one order from one or more resellers or customers wherein the at least one order is related to the plurality of branded promotional products;

providing a bidding module for enabling at least one or more resellers or customers to present at least one order and enabling at least one vendor to bid on the presented order wherein the at least one order is related to the plurality of branded promotional products;

providing an artwork library for storing customer's logo and branding artwork associated with the plurality of branded promotional products; and

processing orders for products received from the front office module through a processor.

21. **(Previously Presented)** A computer implemented system for providing a central exchange of data associated with branded promotional products, the computer implemented system comprising:

a product database for storing data related to a plurality of products, the data including at least pricing data and imprinting data related to the plurality of products;

a vendor entry point interface for enabling a vendor to enter at least one product data specifics to the product database, the at least one product data specifics comprising one or more of imprinting data, display data, accurate detailed pricing data and product placement data;

a vendor showcase module for displaying product data and providing ordering access to one or more resellers at a reseller entry point interface, wherein the vendor showcase module is customized for a particular vendor;

a branded promotional products module for providing a plurality of promotional products to one or more of customers and resellers and receiving at least one order for one or more promotional products;

a reseller showcase module for displaying products selected by the reseller for resale to a reseller group of customers selected by the reseller where the reseller group of customers accesses the reseller showcase module at a reseller customer entry point interface; and

a company logo store module for displaying products selected by the reseller for resale to a group of customers associated with a company, wherein the company logo store module is customized for the company;

wherein customers comprise users who buy products from the branded promotional products module; resellers comprise users who resell products to customers; and vendors comprise users who supply one or more of products and imprinting services;

wherein the product database, the vendor entry point interface; the vendor showcase module, the branded promotional products module, the reseller showcase module, the company logo store module are interoperably connected.

22. **(Previously Presented)** The system of claim 21, further enabling one or more customers to schedule reminders for a recurring event related to ordering promotional products.

23. **(Previously Presented)** The system of claim 21, further comprising:

a back office module for processing the orders for the plurality of promotional products.

24. **(Previously Presented)** The system of claim 21, further comprising:

a front office module for providing one or more of order status data, historical information related to orders and market information services wherein the market information services comprise one or more of account summary options and web hits habit reports.

25. **(Previously Presented)** The system of claim 21, further comprising:

a bidding module for enabling one or more of resellers and customers to present at least one order and enabling a plurality of vendors to bid on the presented at least one order.

26. **(Previously Presented)** A computer implemented method for providing a central exchange of data associated with branded promotional products, the computer implemented method comprising the steps of:

storing data related to a plurality of products, the data including at least pricing data and imprinting data related to the plurality of products at one or more product databases;

enabling a vendor to enter at least one product data specifics at a vendor entry point interface, the at least one product data specifics comprising one or more of imprinting data, display data, accurate detailed pricing data and product placement data;

displaying product data and providing ordering access at a vendor showcase module to one or more resellers at a reseller entry point interface, wherein the product data is customized for a particular vendor;

providing a plurality of promotional products to one or more of customers and resellers and receiving at least one order for one or more promotional products at a branded promotional products module;

displaying products selected by the reseller at a reseller showcase module for resale to a reseller group of customers selected by the reseller where the reseller group of customer accesses the reseller showcase module at a reseller customer entry point interface; and

displaying products selected by the reseller for resale to a group of customers associated with a company at a company logo store module, wherein the products are customized for the company;

wherein customers comprise users who buy products from the branded promotional products module; resellers comprise users who resell products to customers; and vendors comprise users who supply one or more of products and imprinting services.

27. **(Previously Presented)** The method of claim 26, further enabling one or more customers to schedule reminders for a recurring event related to ordering promotional products.

28. **(Previously Presented)** The method of claim 26, further comprising the step of: processing the orders for the plurality of promotional products.

29. **(Previously Presented)** The method of claim 26, further comprising the step of: providing one or more of order status data, historical information related to orders and market information services wherein the market information services comprise one or more of account summary options and web hits habit reports.

30. **(Previously Presented)** The method of claim 26, further comprising the step of: enabling one or more of resellers and customers to present at least one order and enabling a plurality of vendors to bid on the presented at least one order.

31. **(Previously Presented)** The system of claim 21, wherein the resellers comprise distributors and the vendors comprise suppliers.

32. **(Previously Presented)** The system of claim 21, further comprising an artwork library for storing artwork associated with at least one of the plurality of products.

33. **(Previously Presented)** The system of claim 21, wherein the at least one order is tracked and order status data is provided.

34. **(Previously Presented)** The method of claim 26, wherein the resellers comprise distributors and the vendors comprise suppliers.

35. **(Previously Presented)** The method of claim 26, further comprising the step of:
providing an artwork library for storing artwork associated with at least one of the
plurality of products.

36. **(Previously Presented)** The method of claim 26, wherein the at least one order is
tracked and order status data is provided.